



February 17, 1999

Ms. Tracy Calabrese
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR99-0479

Dear Ms. Calabrese:

You asked that this office make certain corrections in Open Records Letter 98-2899 (1998), which was issued to the City of Houston on November 30, 1998. Having reviewed that decision, we now withdraw it and substitute this decision in its place. Your request for a corrected ruling was assigned ID# 122519.

The City of Houston (the "city") received a request for "a printout of the index screen showing Arrests, Citations, Calls for Service, Case Numbers, Physical Descriptions and Alias' [sic] or any other police activity" regarding a specific individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You contend that portions of the information, as requested, implicate the privacy rights of the named individual, and therefore, are excepted from required public disclosure pursuant to section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

To the extent the requestor is asking for any unspecified records in which the named individual is identified as a "suspect," the requestor, in essence, is asking that the city compile the individual's criminal history. Where an individual's criminal information history has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations recognize a privacy interest by limiting access to criminal history record information, which states obtain from the federal government or other

states). Similarly, open records decisions issued by this office acknowledge this privacy interest. See Open Records Decision Nos. 616 (1993), 565 (1990). The city, therefore, must withhold all compilations of the referenced individual's criminal history (Exhibits 2 through 5) pursuant to section 552.101.¹

You represent that Exhibit 6 is an investigation into a crime that did not result in a conviction or deferred adjudication, and you contend that it is exempt from disclosure pursuant to section 552.108(a)(2). We conclude that you have met your burden of establishing that most of Exhibit 6 is excepted from disclosure pursuant to section 552.108.

Section 552.108(a)(2) does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). The same type of information was specifically made public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). In that case, the court held that the public had a right to the information usually contained on the front page of an offense report: the offense committed, location of the crime, an identification and description of the complainant, the premises involved, the time of the occurrence, property involved, vehicles involved, a description of the weather, a detailed description of the offense in question, and the names of the investigating officers. This information must be released from Exhibit 6.

You contend that Exhibit 7 may be withheld under the informer's privilege, which is incorporated under section 552.101. The "informer's privilege" protects the identity of persons who report violations of the law. The informer's privilege has been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

Having reviewed Exhibit 7, we conclude that you may withhold, under the informer's privilege, the portions of the information we have marked. Since we have permitted you to withhold under the informer's privilege the identity of the informant in Exhibit 7, we need not address your claims that the same information is also protected under section 552.108.

¹On the other hand, the individual's privacy interest is not implicated where he is identified as being either a victim or witness.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", with a stylized, flowing script.

William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref:: ID# 122519

Enclosures: Submitted documents

cc: Mr. David Russell
FYI Investigations, Inc.
P.O. Box 821097
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(w/o enclosures)